

with the provisions of subpart F of this part.

§ 404.424 Total amount of deductions where more than one deduction event occurs in a month.

If more than one of the deduction events specified in §§ 404.415, 404.417, and 404.421 occurred in any 1 month, each of which would occasion a deduction equal to the benefit for such month, only an amount equal to such benefit is deducted.

§ 404.425 Total amount of deductions where deduction events occur in more than 1 month.

If a deduction event described in §§ 404.415, 404.417, 404.421, and 404.422 occurs in more than 1 month, the total amount deducted from an individual's benefits is equal to the sum of the deductions for all months in which any such event occurred.

§ 404.428 Earnings in a taxable year.

(a) *General.* (1) In applying the annual earnings test (see § 404.415(a)) under this subpart, all of a beneficiary's earnings (as defined in § 404.429) for all months of the beneficiary's taxable year are used even though the individual may not be entitled to benefits during all months of the taxable year. (See, however, § 404.430 for the rule which applies to earnings of a beneficiary who attains age 72 during the taxable year (age 70 for months after December 1982)).

(2) The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Social Security Administration that the individual has a different taxable year. A self-employed individual's taxable year is a calendar year unless the individual has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954. In either case, the number of months in a taxable year is not affected by—(i) The time a claim for social security benefits is filed, (ii) attainment of any particular age, (iii) marriage or the termination of marriage, or (iv) adoption. For beneficiaries who die on or before November 10, 1988, a taxable year ends with the month of the death of the beneficiary. The month of death is counted

as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430. For beneficiaries who die after November 10, 1988, the number of months used in determining whether the beneficiary had excess earnings for the year under § 404.430 is 12.

(b) *When derived.* Wages as defined in § 404.429(c) are derived and includable as earnings for the months and year in which the beneficiary rendered the services. Net earnings from self-employment, or net losses therefrom, are derived, or incurred, and are includable as earnings or losses, in the year for which such earnings or losses are reportable for Federal income tax purposes.

[32 FR 19159, Dec. 20, 1967, as amended at 45 FR 48116, July 18, 1980; 48 FR 4282, Jan. 31, 1983; 55 FR 37461, Sept. 12, 1990]

§ 404.429 Earnings; defined.

(a) *General.* When the term *earnings* is used in this subpart other than as a part of the phrase *net earnings from self-employment*, it means an individual's earnings for a taxable year after 1954. It includes the sum of his wages for services rendered in such year, and his net earnings from self-employment for the taxable year, minus any net loss from self-employment for the same taxable year.

(b) *Net earnings from self-employment; net loss from self-employment.* An individual's net earnings from self-employment and his net loss from self-employment are determined under the provisions in subpart K of this part except that:

(1) For the purposes of this section, the provisions in subpart K of this part shall not apply that exclude from the definition of *trade or business* the following occupations:

(i) The performance of the functions of a public office;

(ii) The performance of a service of a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner;

(iv) For taxable years ending before 1965, the performance by an individual in the exercise of his profession as a doctor of medicine;

(v) For taxable years ending before 1966, the performance of service by an individual in the exercise of his profession as a lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist.

(2) For the sole purpose of the earnings test under this subpart—

(i) An individual who has attained age 65 on or before the last day of his or her taxable year shall have excluded from his or her gross earnings from self-employment, royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained age 65 if the copyright or patent is on property created by his or her own personal efforts; and

(ii) An individual entitled to insurance benefits, under title II of the Act, other than disability insurance benefits or child's insurance benefits payable by reason of being under a disability, shall have excluded from gross earnings for any year after 1977 any self-employment income received in a year after his or her initial year of entitlement that is not attributable to services performed after the first month he or she became entitled to benefits. As used in this paragraph (b)(2)(ii) of this section, *services* means any significant work activity performed by the individual in the operation or management of a trade, profession, or business which can be related to the income received. Such services will be termed *significant services*. Where a portion of the income received in a year is not related to any significant services performed after the month of initial entitlement, only that portion may be excluded from gross earnings for deduction purposes. The balance of the income counts for deduction purposes. Not counted as *significant services* are—

(A) Actions taken after the initial month of entitlement to sell a crop or product if the crop or product was completely produced or created in or before

the month of entitlement. This rule does not apply to income received by an individual from a trade or business of buying and selling products produced or made by others; for example, a grain broker.

(B) Those activities that are related solely to protecting an investment in a currently operating business or that are too irregular, occasional, or minor to be considered as having a bearing on the income received, such as—

(1) Hiring an agent, manager, or other employee to operate the business;

(2) Signing contracts where the owner's signature is required so long as the major contract negotiations were handled by the owner's agent, manager, or other employees in running the business for the owner;

(3) Looking over the company's financial records to assess the effectiveness of those agents, managers, or employees in running the business for the owner;

(4) Personally contacting an old and valued customer solely for the purpose of maintaining good will when such contact has a minimal effect on the ongoing operation of the trade or business; or

(5) Occasionally filling in for an agent, manager, or other employee or partner in an emergency.

(iii) An individual is presumed to have royalties or other self-employment income countable for purposes of the earnings test until it is shown to the satisfaction of the Social Security Administration that such income may be excluded under § 404.429(b)(2) (i) or (ii).

(3) In figuring an individual's net earnings or net loss from self-employment, all net income or net loss is includable even though (i) the individual did not perform personal services in carrying on the trade or business, (ii) the net profit was less than \$400, (iii) the net profit was in excess of the maximum amount creditable to his earnings record, or (iv) the net profit was not reportable for social security tax purposes.

(4) An individual's net earnings from self-employment is the excess of gross income over the allowable business deductions (allowed under the Internal

Revenue Code). An individual's net loss from self-employment is the excess of business deductions (that are allowed under the Internal Revenue Code) over gross income. Expenses arising in connection with the production of income excluded from gross income under § 404.429(b)(2)(ii) cannot be deducted from wages or net earnings from self-employment that are not excluded under that section.

(c) *Wages defined.* Wages include the gross amount of an individual's wages rather than the net amount paid after deductions by the employer for items such as taxes and insurance. For purposes of this section, an individual's wages are determined under the provisions of subpart K of this part, except that, notwithstanding the provisions of subpart K, wages also includes:

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

(2) Cash remuneration of less than \$50 paid in a calendar quarter to an employee for (i) domestic service in the private home of the employer, or (ii) service not in the course of the employer's trade or business; and

(3) Payments for agricultural labor excluded under § 404.1055.

(4) Remuneration, cash and noncash, for service as a homemaker even though the cash remuneration paid the employee is less than \$50 in a calendar quarter; and

(5) For taxable years ending after 1955, services performed outside the United States in the military or naval service of the United States; and

(6) Remuneration for services excepted from employment performed within the United States by an individual as an employee that are for that reason not considered wages under subpart K of this part, if the remuneration for such services is not includable in computing his net earnings from self-employment or net loss from self-employment, as defined in paragraph (b) of this section.

(d) *Presumptions concerning wages.* For purposes of this section, where reports received by the Administration show wages (as defined in paragraph (c) of this section) were paid to an individual during a taxable year, it is presumed that they were paid to him for services

rendered in that year until such time as it is shown to the satisfaction of the Administration that the wages were paid for services rendered in another taxable year. If the reports of wages paid to an individual show his wages for a calendar year, the individual's taxable year is presumed to be a calendar year for purposes of this section until it is shown to the satisfaction of the Administration that his taxable year is not a calendar year.

[32 FR 19159, Dec. 20, 1967, as amended at 41 FR 13912, Apr. 1, 1976; 47 FR 46690, Oct. 20, 1982; 52 FR 8249, Mar. 17, 1987; 57 FR 59913, Dec. 17, 1992]

§ 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined.

(a) *Method of determining excess earnings for years ending after December 1972.* For taxable years ending after 1972, an individual's excess earnings for a taxable year are 50 percent of his or her earnings (as described in § 404.429) for the year which are above the exempt amount. For an individual who has attained retirement age, as defined in section 216(l) of the Act, excess earnings for a taxable year beginning after December 31, 1989, are 33⅓ percent of his or her earnings (as described in § 404.429) for the year which are above the exempt amount. For deaths after November 10, 1988, an individual who dies in the taxable year in which he or she would have attained retirement age shall have his or her excess earnings computed as if he or she had attained retirement age. The exempt amount is obtained by multiplying the number of months in the taxable year (except that the number of months in the taxable year in which the individual dies shall be 12, if death occurs after November 10, 1988) by the following applicable monthly exempt amount.

(1) \$175 for taxable years ending after December 1972 and before January 1974;

(2) \$200 for taxable years beginning after December 1973 and before January 1975; and

(3) The exempt amount for taxable years ending after December 1974, as determined under paragraphs (c) and (d) of this section. However, earnings in and after the month an individual